

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made as of November 3, 2005 by and between **Heathrow Development, LLC**, a Nebraska limited liability company, ("Buyer"), and the **City of Lincoln, Nebraska** ("City"). Buyer and City hereby agree as follows:

1. **Property.** City is the owner of certain real estate located at 440 South S. 8th Street, Lincoln, Nebraska and described on Exhibit "A" attached hereto, and incorporated herein by this reference including land, buildings, fixtures, vacated alleys, vacated public right-of-way along or abutting the south side of the Property and certain improvements made to the buildings commonly known as the "K" Street Power Plant Complex, subject to the Easements described in Section 8 below. ("Property"). The Property has two parts. The east three (3) tier (2 story, 4 story and 6 story) building ("East Building") and the west three (3) story wing ("West Wing Building"). The legal description in the warranty deeds for the Project described herein to be delivered at Closing will be modified to reflect the legal descriptions in the Title Commitment and Survey described below.

2. **Project.** If there is a Closing under this Agreement, the Buyer intends to commence a redevelopment project within the East Building resulting in approximately 50 to 70 residential condominiums and 0-15 commercial and/or residential condominiums being created and made available for sale to the public (collectively referred to herein as the "East Building Project") and the Buyer intends to commence a redevelopment project within the West Wing Building resulting in approximately 0-12 residential condominiums and 0-12 commercial and/or residential condominiums being created and made available for sale to the public (collectively referred to herein as the "West Wing Building Project"). The East Building Project and West Wing Building Project are hereinafter referred to as the "Project".

3. **Office And Record Storage Facility.** Buyer acknowledges that the City has entered into a Lease Agreement Providing For The Lease Of 425 South 9th Street (K Street Power Plant) To the Lincoln-Lancaster County Public Commission, dated October 15, 1994 ("Base Lease") with the Lincoln-Lancaster County Public Building Commission ("Building Commission"). In turn, the Building Commission has entered into a Lease Agreement Providing For The Lease Of 425 South 9th Street (K Street Power Plant) To The City Of Lincoln, Nebraska, And The County Of Lancaster, Nebraska Lincoln-Lancaster County Public Commission, dated October 15, 1994 ("Sublease") with the City and the County of Lancaster, Nebraska ("County"). The Building Commission has also entered into other space and parking leases and operating agreements (collectively "Other Leases") with the State of Nebraska ("State"), and/or other third parties ("Third Parties"), including any of their various departments, agencies, subdivisions or contractors. The Base Lease, Sublease and Other Leases are hereinafter collectively referred to as the "Leases". The Building Commission, City, County, State and Third Parties are hereinafter referred to collectively as "Tenants". In addition, the Building Commission has issued outstanding indebtedness on the Property to provide funds to allow the Property to be used as offices and a record storage facility.

4. **Alternative Facility.** In order for the Project to occur: (i) the City will need to cause the Leases to be cancelled or assigned to an alternative office and record storage facility or facilities (collectively "Alternative Facility"); and (ii) the Building Commission may need to refund and/or refinance its outstanding indebtedness for an Alternative Facility or facilities. The successful development and operation of the Project is dependent upon the continued cooperation and good faith of the City, and Building Commission identifying, funding and developing the Alternative Facility and coordinating the move and relocation of all Tenants' possessions, personal property, offices, trade fixtures, equipment, storage, records, papers and other uses and items (collectively "Records") from the Property to the Alternative Facility. Such cooperation shall be required of all parties interested in any phase or element of the Project and the Alternative Facility.

5. **Purchase and Sale of the Property.** Subject to the terms and conditions set forth herein, City agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from City, at the Closing (as hereafter defined) for the Purchase Price (as hereafter defined).

6. **Purchase Price.** The "Purchase Price" shall be the sum of Five Million and no/100 Dollars (\$5,000,000), subject to the "Easement Option", as defined hereafter and the resulting price adjustment described in Section 7 below ("Purchase Price"). Buyer agrees to pay City the Purchase Price by cashier's check, certified funds or wire transfer, as designated by City.

7. **Reservation of Easements.**

(a) **Easement Option.** Buyer hereby grants and conveys to City an irrevocable and exclusive right and option ("Easement Option") to reserve at the Closing the following two nonexclusive easements (collectively "Easements"):

(i) Telecommunication Interior Room and Telecommunication Corridors located in the East Building; and

(ii) Telecommunication Tower located on the roof of the East Building and Telecommunication Corridors located within the East Building.

If City exercises the Easement Option and if the sale of the Property contemplated hereby is consummated and title is transferred subject to the Easements, then the Purchase Price shall be reduced by the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) as the consideration for the City to reserve said Easements. If City does not exercise the Easement Option, then there shall not be a reduction of the Purchase Price. If the City exercises the Easement Option, but the sale of the Property contemplated hereby is not consummated for a contingency or matter stated herein, then said Easement Option shall be null and void.

(b) **Mutual Cooperation.** The successful operation of the Project and the Easements components are dependent upon the continued cooperation and good faith of the owners and users of all of the interrelated uses therein. Such cooperation shall be required of all parties interested in any phase or element of the Project. Every covenant,

restriction or easement herein stated shall be construed in recognition of this interdependence and need for continued mutual cooperation.

(c) **Responsibilities.** In the event the City exercises the Easement Option, then the City, at its expense, shall have the following responsibilities and liabilities regarding the Easements: securing, monitoring, fencing, insurance, maintenance, operation, repairs, replacement, renovation, updating, modernization and capital improvement and related personal property, property taxes, special assessments, taxes, utilities and infrastructure charges, custodial, snow removal and garbage refuse service, if any (collectively "Maintenance").

(d) **Indemnification.** The City shall indemnify and hold Buyer and its successors and assigns harmless from the City's negligent or willful misconduct in the Maintenance of the Easement and the Easement improvements.

(e) **Separate Easement Agreement.** Said Easements shall be for the existing and necessary use areas of the Telecommunication Interior Room, Telecommunication Tower and related Telecommunication Corridors (collectively "Telecommunication System"). Prior to the Closing, the parties agree to further define said Easements and prepare a separate written Easement Agreement which shall be filed of record.

(f) **Relocation of Telecommunication Corridors.** Before or after Closing, the Buyer may propose to the City alternative route(s) or location(s) to relocate portions of the Telecommunication Systems within the Property and the City will use its best efforts to consider the Buyer's request to relocate said Telecommunications System; provided that, (i) the City agrees in advance to said relocation of the Telecommunication System in writing; (ii) said relocation costs shall be paid for by the Buyer, (iii) said alternative route or location is in conformity with applicable codes and regulations, (iii) said alternative route or location provides for or permit reasonable Maintenance; and (iv) the Easement Agreement is written or amended to substitute and replace the existing route or location for the alternative route or location and if said modification or amendment to the Easement Agreement is filed of record.

8. **Contingencies.**

(a) **City Contingency.** This Agreement is contingent upon the City and Building Commission determining the marketability and financing of the Alternative Facility based upon seeking a request for proposal for Alternative Facility and debt borrowing, if any, at levels determined reasonably necessary by the City and Building Commission ("City's Contingency"). The City warrants and represents to the Buyer that the City will promptly and expeditiously use its best efforts to carry out or cause the Building Commission to carry out the request for proposal and financing of the Alternative Facility. In the event that the City or Building Commission is unable to secure the necessary proposal and financing of the Alternative Facility, on terms and conditions reasonably acceptable to Buyer within one hundred and eighty (180) days after the execution of this Agreement by the City and Buyer ("City's Contingency Period"),

then City may terminate this Agreement by written notice to the Buyer within one hundred and eighty (180) days after the execution of this Agreement by the City and Buyer. If City fails to terminate this Agreement by written notice to the Buyer pursuant to this provision, then City shall be deemed to have forever waived its right to terminate this Agreement based upon City's inability to meet the City's Contingency.

(b) **Buyer Contingency.** This Agreement is contingent upon the Buyer determining the marketability and financing of the Project based upon rehabilitation costs, presale/prelease of the Project and debt borrowing at levels determined reasonably necessary by the Buyer and its investors and lender(s) and Buyer securing a building permit for the Project based upon building, subdivision, and zoning code compliance for the implementation of the Project or relating to the ability of Buyer to obtain Certificates of Occupancy (collectively "Buyer's Contingency"). As part of the Buyer's Contingency, Buyer shall apply for the necessary financing required by Buyer in order to meet the financial obligations imposed upon Buyer under the terms and provisions of this Agreement. Buyer warrants and represents to the City that Buyer will promptly and expeditiously use its best efforts to carry out the marketing and financing of the Project. In the event that Buyer is unable to secure the necessary marketing and financing, on terms and conditions reasonably acceptable to Buyer within one hundred and eighty (180) days after the execution of this Agreement by the City and Buyer ("Buyer's Contingency Period"), then Buyer may terminate this Agreement by written notice to the City within one hundred and eighty (180) days after the execution of this Agreement by the City and Buyer. If Buyer fails to terminate this Agreement by written notice to the City pursuant to this provision, then Buyer shall be deemed to have forever waived its right to terminate this Agreement based upon Buyer's inability to meet the Buyer's Contingency.

9. **Closing.** The "Closing" shall occur at a place and time mutually agreed upon by the parties, within ninety (90) days following the date when all conditions and contingencies set forth in this Agreement are satisfied or waived. The date the Closing occurs is herein called the "Closing Date".

10. **City Representations.** City represents and warrants to Buyer, as of the Closing, as follows:

- (a) City has good, marketable, fee simple title to the Property; has the authority to transfer title to the Property to the Buyer; and has undertaken all steps necessary to effectuate such authority, including, but not limited to, having the Property classified or designated in a specific manner and obtaining the approval or consent of any board, council, agency or other authority.
- (b) There are no proceedings, actions, litigation, bankruptcies, judgments or claims of any nature whatsoever against City, any of its related entities, or the Property, nor any pending with any government regulatory authority or any administrative forum, which affect the ability of the City to transfer the Property or impede the use of the Property as contemplated by the

Project.

- (c) The Property has access to and from a duly dedicated and accepted public street or highway and is not located in a designated floodplain or floodway.
- (d) No hazardous, toxic or other regulated substances, within the meaning of any applicable federal, state or local statute or regulation, asbestos or any underground storage tanks, are presently being produced, stored or otherwise located upon or below the Property. To the best of the City's knowledge, no part of the Property is contaminated by any such substance and no part of the Property has ever been used as a landfill.
- (e) The Property is presently serviced by water, sewer, electric, telephone, fiber optic data transmission lines, cable television and all other utilities necessary for the "K" Street Power Plant Complex.
- (f) All the alleys within the block bounded by "K" Street, 9th Street, "L" Street and 8th Street and the public right-of-way along or abutting the south side of the Property have been vacated by the City.
- (g) City has received no notice of actual or threatened reduction or curtailment of any utility service now supplied to the Property.

All representations and warranties of City herein contained shall survive the Closing.

11. **Intentionally Omitted.**

12. **Buyer Representations.** Buyer represents and warrants to City as of the date hereof and as of the Closing, Buyer has the authority to enter into this Agreement and observe and perform all of its duties and obligations hereunder. All representations and warranties of Buyer herein contained shall survive the Closing.

13. **City Covenants.** City covenants and agrees with Buyer as follows:

- (a) City shall not enter into any easements, covenants, restrictions or similar instruments affecting the Property without the prior written consent of Buyer.
- (b) City shall not allow or permit any party, prior to Closing, to make any improvements or alterations to the Property that would reduce the value of the Property, or allow any encroachments or other encumbrances to occur with regard to the Property, without the prior written consent of the Buyer.
- (c) City shall maintain the Property in accordance with the Leases and all federal, state and local building, fire, safety, health, access, disability, environmental, housing, land use, zoning and set back codes, laws, rules,

regulations and standards until the date of Closing.

- (d) City shall pay prior to the Closing any and all outstanding utility connection fees or charges.
- (e) Prior to the Closing, the Property shall be free of all Tenants and Leases, including free of all parking Tenants and parking Leases. City shall not enter into any lease, occupancy agreement or other agreement respecting all or any portion of the Property without the prior written consent of Buyer.
- (f) City shall allow Buyer or Buyer's representatives, agents, contractors, subcontractors, guests, prospective lenders, prospective buyers and renters, access to the Property at any reasonable time from the date of execution of this Agreement until Closing, to determine rehabilitation costs and to pre-market and pre-sell the Project, including placing lawful and appropriate banner and/or marketing sign(s) on the Property and to carry out Inspections. Buyer understands that certain portions of the Property, generally referred to as "Police Evidence Storage," have certain legal restrictions imposed on accessibility and therefore agrees to make a request for access to the Police Evidence Storage areas not less than twenty-four (24) hours prior to the requested time.
- (g) Within five (5) business days from the date of executing this Agreement, the City, at its expense, shall provide to Buyer any and all plans, drawings, reports, surveys, test results, environmental audits and abatement reports, verifications or inspections which it has conducted or had access to regarding the Property, including but not limited to any Phase I environmental audits, any ALTA survey and any architectural drawings and blueprints of the Projects prepare by Sinclair Hille.
- (h) City will use its best efforts to reduce the County's present assessed value of the "K" Street Power Plant Complex to a figure substantially to the fair market value appraisal of the "K" Street Power Plant Complex. In the event such appeal is still pending at the time of Closing, then the City agrees to assign to the Buyer at Closing its interest in the appeal.
- (i) The City, at its expense, shall remove the Records from the Property prior to the Closing. Buyer shall not have any liability or cost to remove the Records from the Property. Upon removal of the Records from the Property, the City will have the Property's building space professionally inspected for pests based upon a written list of pests acceptable to Buyer. The City, at its expense, will deliver a written certificate at Closing indicating the Property's building space is free of such pests or have the Property's building space professionally treated and then deliver a written certificate at Closing indicating the Property's building space is free of

such pests.

14. **Inspection Period.** During the ninety (90) day period commencing with the date of execution hereof ("Initial Inspection Period"), Buyer shall have the right, at Buyer's expense, to conduct such reviews, inspections and investigations of the Property and the documents, reports and other information regarding the Property and their effect on the Project, including but not limited to, soil reports, tests, environmental assessments and building, subdivision, and zoning code compliance for the implementation of the Project or relating to the ability of Buyer to obtain Certificates of Occupancy, all as Buyer shall determine necessary in its sole discretion, herein collectively called the "Inspections". Prior to the Closing, Buyer may update the Inspections respecting the Property (collectively "Update Inspection Period"). The Initial Inspection Period and Update Inspection Period are herein after called "Inspection Period". City agrees to provide Buyer and Buyer's agents with access to the Property and Buyer's contractors, materialmen, employees and agents during the Inspection Period for the purpose of the Inspections. In the event Buyer shall determine prior to the end of the Inspection Period that the results of the Inspections are unsatisfactory, in its sole discretion then, Buyer shall have the right to terminate this Agreement by written notice to City, whereupon this Agreement shall terminate. Nothing in this Section shall limit or otherwise restrict Buyer's rights or ability to conduct any other inspections contemplated by this Agreement.

15. **Survey.** Within thirty (30) days of the date of this Agreement, City shall obtain an ALTA survey of the Project and all easements and other matters referred to in the Title Commitment (the "Survey"), and shall deliver the Survey to the Buyer.

16. **Title Commitment.** Within ten (10) days of the date hereof, Buyer shall order an ALTA title insurance commitment (the "Title Commitment"), from Nebraska Title Company or such other appropriately licensed and competent title company as the Buyer shall reasonably determine ("Title Company"), respecting the Property. Within thirty (30) days after Buyer's receipt of the Title Commitment and the Survey described in Section 15 above, Buyer shall give written notice to City of any matters disclosed in the Title Commitment or Survey which Buyer finds objectionable in the development and operation of the Project. City shall thereafter use its best efforts to correct and/or cure all such objectionable matters within thirty (30) days after the date thereof. Any matters disclosed in the Title Commitment and Survey and not objected to by Buyer are herein called the "Permitted Exceptions"; provided that, in no event shall any liens or financial encumbrances constitute Permitted Exceptions nor shall any Leases, easements, covenants, restrictions or other matters recorded against the Property after the date of the Title Commitment constitute Permitted Exceptions. Prior to the Closing, Buyer may obtain an updated Title Commitment respecting the Property. Prior to the Closing, Buyer shall give written notice to City of any matters disclosed in the Title Commitment or Survey which Buyer finds objectionable in the development and operation of the Project. City shall thereafter use its best efforts to correct and/or cure all such objectionable matters prior to the applicable Closing. In the event City shall fail to correct and/or cure any objectionable matters in the Title Commitment or Survey, Buyer shall have the right to terminate this Agreement by written notice to City whereupon this Agreement shall terminate.

17. **Buyer's Conditions.** Buyer's duty and obligation to affect the Closing under this

Agreement shall be subject to the following conditions:

- (a) All of City's representations and warranties in this Agreement shall be true and accurate on the date of the Closing as if then made.
- (b) City shall have fully observed and performed all of City's covenants and agreements set forth in this Agreement.
- (c) The results of any Inspections of the Property by Buyer prior to the Closing shall be acceptable to Buyer, in Buyer's sole discretion.
- (d) Buyer obtaining actual change in zoning from the current "P" designation to "B4" or such other appropriate zoning designation as permits Buyer to improve the Property to accommodate the Project, wherein a resident can simultaneously reside and/or conduct business or other commercial activity within the confines of his unit or other non-residential commercial purposes.
- (e) Buyer obtaining any and all necessary permits, approvals and authorizations from any local, state or federal agencies or authorities necessary to commence work on the Project.

In the event any of the foregoing conditions are not satisfied on or before the Closing Date, Buyer may terminate this Agreement. Buyer may, at its option, waive any of the foregoing conditions.

18. **City's Conditions.** City's duty and obligation to affect the Closing under this Agreement shall be subject to the following conditions:

- (a) All of Buyer's representations and warranties in this Agreement shall be true and accurate on the date of the Closing as if then made.
- (b) Buyer shall have fully observed and performed all of Buyer's covenants and agreements set forth in this Agreement.

In the event any of the foregoing conditions are not satisfied on or before the Closing Date, Buyer or City may terminate this Agreement. Buyer may, at its option, waive any of the foregoing conditions.

19. **Closing Adjustments.** The following shall be apportioned, prorated or adjusted between Buyer and City on and as of the Closing Date (the "Closing Adjustments"):

- (a) All real estate taxes becoming due in the year of the Closing shall be prorated between Buyer and City; all prior years' real estate taxes not theretofore paid shall be paid by City; all future years real estate taxes

shall be the responsibility of Buyer.

- (b) All special assessments against, or related to, the Property for improvements previously constructed, under construction or ordered or required to be constructed by any governmental or regulatory authority but not yet assessed shall be paid by City.
- (c) All documentary transfer taxes payable by virtue of the purchase and sale of the Property shall be paid by City.
- (d) The cost of the Title Commitment (and the title insurance policy issued pursuant thereto) and the cost of closing and escrow services of Title Company shall be divided equally between Buyer and City.
- (e) Buyer shall be responsible for and shall pay all costs incurred in connection with the Inspections.
- (f) City shall be responsible for and shall pay the costs of the Survey.
- (g) City shall be responsible for and shall pay all costs incurred by City in connection with City's negotiation, observance and performance of this Agreement.
- (h) Buyer shall be responsible for and shall pay all costs incurred by Buyer in connection with Buyer's negotiation, observance and performance of this Agreement.

20. **Closing Deliveries.** At the Closing the following deliveries shall occur:

- (a) City shall convey the Property by warranty deed free and clear of all defects, liens, right to a lien, claims, Leases, rights or claims of parties in possession, and encumbrances except prorated real estate taxes and the Permitted Exceptions and subject to the following use restrictions, which constitute the basis for the fair market value determined of the Property:
 - i. Any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 75% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations;
 - ii. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 75% of gross sales on the premises) or any such business that has an

unreasonable pattern of unlawful disturbances or tobacco law violations;

- iii. Any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;
 - iv. Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, refinishing, or parts and equipment cleaning business;
 - v. Any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law; and
 - vii. Any business involving a sale or display of weapons, off-site outdoor advertising on the premises, illegal activities, or sale of any illegal goods or products.
- (b) City and Buyer shall execute and deliver at the Closing: (i) the separate Easement Agreement, if any, described in Section 7; (ii) the separate Parking Rights Agreement described in Section 41 and (iii) the separate Energy Rights Agreement described in Section 42.
 - (c) Buyer shall pay the Purchase Price (after application of the Closing Adjustments) to City as set forth in Section 7.
 - (d) City shall deliver possession of the Property to Buyer, along with all keys, openers, access codes and information related to the occupancy and ownership of the Property.

Without limiting the foregoing, City agrees to cause all mortgages, deeds of trust, Leases and any other liens or encumbrances against the Project to be released or reconveyed of record and further, to execute and deliver such further instruments or documents, and take such further actions as Buyer may reasonably require, in order to fully effect the sale, transfer and conveyance of the Project to Buyer.

21. **Default.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions by the City or Buyer, or any successors to such parties, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such thirty (30) day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach, including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation.

22. **Casualty.** Risk of loss prior to Closing shall remain with City.

23. **Eminent Domain.** If, prior to the Closing, all or any portion of the Property shall be taken or expected to be taken by eminent domain or retained under provisions of eminent domain, City shall promptly give notice thereof to Buyer, and Buyer shall have the right to either waive such taking and effect the Closing or to not waive such taking and cause this Agreement to terminate. If there shall be a taking and Buyer shall elect not to terminate this Agreement but instead to affect the Closing, the Purchase Price shall be reduced in a pro rata manner.

24. **Indemnification by City.** Upon the terms and subject to the conditions set forth in this Agreement, the City agrees to indemnify and hold Buyer harmless against, and will reimburse Buyer upon demand for, any payment, loss, cost or expense (including reasonable attorney's fees) made or incurred by or asserted against Buyer in respect of any and all damages resulting from:

- (a) Any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of City contained in this Agreement;
- (b) Any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished pursuant to this Article or contemplated hereby; and
- (c) Any liabilities, loss, cost or expense made or incurred by or asserted against Buyer or the Property in respect of any and all matters resulting from the Property on or before the Closing Date.

25. **Indemnification by Buyer.** Upon the terms and subject to the conditions set forth in this Agreement, Buyer agrees to indemnify and hold City harmless against, and will reimburse City upon demand for, any payment, loss, cost or expense (including reasonable attorney's fees) made or incurred by or asserted against City in respect of any and all damages resulting from:

- (a) Any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Buyer contained in this

Agreement;

(b) Any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished pursuant to this Article or contemplated hereby; and

(c) Any liabilities, loss, cost or expense made or incurred by or asserted against City or the Property in respect of any and all matters resulting from the Property after the Closing Date.

26. **Brokerage.** City acknowledges that Kathryn P. Halperin is a licensed broker and is also a Manager of the Buyer. Kathryn P. Halperin will not be receiving a brokerage fee or commission. City and Buyer represents to each other that no other broker was engaged or was in any way instrumental in the consummation of the transactions described herein and each party agrees to indemnify, defend and hold harmless the other party from and against any loss, liability, cost or expense resulting from any claim that may be made by any broker or by any other person claiming a commission, fee or other compensation by reason of any act of that party.

27. **No Conflicts.** No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Buyer, any successors in interest or transferees of Buyer, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Buyer, its successors or transferees, or on any obligations under the terms of this Agreement.

28. **Persons Authorized to Issue Approvals.** For purposes of this Agreement and the approvals and disapprovals required hereunder, Buyer shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development or its successor as constituting the approval or disapproval required by any one or more of the City, the Mayor, or the Director of the Department of Urban Development or its successor. Until the City receives further written notice from Buyer, City shall be entitled to rely on the written approval of the President or Secretary of Buyer as constituting the approval or disapproval of Buyer.

29. **Notices.** All notices and other communications which either party is required or desires to send pursuant to the terms of this Agreement shall be in writing and shall be sent by either certified United States mail, postage prepaid, return receipt requested, or delivered personally. Notices and communications shall be deemed to have been given on the day so mailed or on the date when personally delivered. Such notices and communications shall be addressed to the parties as follows:

IF TO CITY: City of Lincoln
 Attn: Mayor's Office
 555 South 10th Street
 Lincoln, NE 68508

with a copy to: City Attorney

575 South 10th Street
Lincoln, NE 68508

IF TO Buyer: Heathrow Development, LLC
Kathryn P. Halperin
7951 Cheney Ridge Road
Lincoln, NE 68516

with a copy to: Seacrest & Kalkowski, PC
Attn: Kent Seacrest
1111 Lincoln Mall, Suite 350
Lincoln, NE 68508

30. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Nebraska.

31. **Modification.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and all understandings and agreements heretofore or simultaneously had between the parties are merged in and contained in this Agreement. This Agreement may not be waived, changed, modified or discharged orally, but only by an agreement in writing signed by the party against whom any waiver, change, modification or discharge is sought.

32. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

33. **Effective Date.** For purposes of this Agreement, the phrases "date of execution hereof," "date hereof," "effective date," "date of this Agreement" or words of similar import, shall mean the date of execution of this Agreement by Buyer or City, as evidenced below, whichever signature occurs last.

34. **Assignment.** Buyer and City shall not be allowed to assign any of its rights or obligations under this Agreement without the express written consent of the other party.

35. **Tax Consequences.** City and Buyer acknowledge that each is relying upon its own knowledge and advisors concerning the bond and tax consequences of actions taken pursuant to this Agreement, and not upon representations, statements, or advice provided by the other party hereto.

36. **Titles of Articles and Sections.** Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

37. **Integrated Contract: Severance of Provisions: Governing Law.** It is intended by the parties that this Agreement and the incorporated, attached and referenced documents shall

be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. This Agreement shall be construed and governed by the laws of Nebraska.

38. **Further Assurances.** Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

39. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

40. **Time of Essence.** The parties agree that time is of the essence of the performance of their respective obligations hereunder.

41. **Parking Rights.** At Closing, the City will grant, remise and relinquish to Buyer and its successors and assigns, the right of first refusal to lease seventy-five (75) monthly parking permits in the parking facility bounded by 9th Street, "K" Street, 10th Street and "L" Street ("Parking Facility") at the then current monthly rates (collectively "Parking Rights"). Prior to the Closing, the parties agree to further define said Parking Rights, including a date certain expiration date, and prepare a separate written Parking Rights Agreement which shall be filed of record.

42. **Energy Rights.** At Closing, the City will grant, remise and relinquish to Buyer and its successors and assigns, the right to lease the current water source heating and air conditioning system from the District Energy Corporation's heating and cooling system (collectively "Facility") at the then current monthly rates (collectively "Energy Rights"), subject to the City's bond counsel's approval. Prior to the Closing, the parties agree to further define said Energy Rights and prepare a separate written Energy Rights Agreement, subject to the City's bond counsel's approval, which shall be filed of record.

"BUYER"

Date: 11/3/05, 2005

HEATHROW DEVELOPMENT, LLC, a
Nebraska limited liability company

By: Kathryn P. Halperin
Kathryn P. Halperin, President

"CITY"

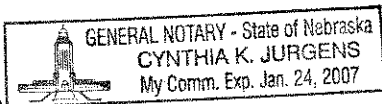
Date: _____, 2005

CITY OF LINCOLN, a Nebraska
municipality

By: _____
Mayor Coleen Seng

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 3rd day of November, 2005
by Kathryn P. Halperin, President of **Heathrow Development, LLC**, a Nebraska limited liability
company, on behalf of the limited liability company.



Cynthia K. Jurgens
Notary Public

(SEAL)

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2005, by Coleen J. Seng, Mayor of the **City of Lincoln, Nebraska**, a municipal
corporation, on behalf of the municipal corporation.

Notary Public

(SEAL)

Exhibit "A"

Legal Description

A portion of Block 102, original Plat of Lincoln, beginning at the northwest corner of Block 102, original plat of Lincoln, Lancaster County, Nebraska; thence easterly along the north line of said Block 102, a distance of 166.12 feet, more or less, to a point 134.05 feet westerly of the northeast corner of said Block 102; thence deflecting right 89 degrees 59 minutes 35 seconds in a southerly direction parallel with the east line of said Block 102, a distance of 164.45 feet; thence deflecting left 89 degrees 59 minutes 35 seconds in an easterly direction parallel with the north line of said Block 102 a distance of 134.05 feet to the east line of said Block 102; thence deflecting right 89 degrees 59 minutes 35 seconds in a southerly direction along the east line of said Block 102, a distance of 135.58 feet, more or less to the southeast corner of said Block 102; thence deflecting right 89 degrees 59 minutes 50 seconds in a westerly direction along the south line of said Block 102, a distance of 300.20 feet, more or less, to the southwest corner of said Block 102, thence deflecting right 90 degrees 00 minutes 25 seconds in a northerly direction along the west line of said Block 102, a distance of 300.08 feet, more or less, to the northwest corner of said Block 102 being the point of beginning; and

That portion of vacated 8th Street, beginning at the southwest corner of Block 102, Original Plat of Lincoln, Lancaster County, Nebraska; thence north along the west line of said Block 102, a distance of 115.50 feet; thence west along a line perpendicular to the west line of said Block 102, a distance of 10.00 feet; thence south along a line located 10.00 feet west of and parallel with the west line of said Block 102, a distance of 115.50 feet; thence east along a line perpendicular to the previously described line, a distance of 10.00 feet to the point of beginning; containing an area of 9,540.00 square feet, more or less; and

That portion of vacated K Street, beginning at the southwest corner of Block 102, Original Plat of Lincoln, Lancaster County, Nebraska; thence east along the south line of said Block 102, a distance of 300.00 feet to the southeast corner of said Block 102; thence south along the extension of the east line of said Block 102, a distance of 20.00 feet; thence southwesterly along a line which deflects 82 degrees 40 minutes 25 seconds right, a distance of 70.58 feet; thence westerly along a line which deflects 6 degrees 04 minutes 52 seconds right, a distance of 230.05 feet; thence north along the southerly extension of the west line of said Block 102, a distance of 34.00 feet to the point of beginning; containing an area of 8,385.0 square feet, more or less.